

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

GREGORY ALAN FERQUERON,

Petitioner,

v.

CASE NO. 05-CV-71051-DT
HONORABLE BERNARD A. FRIEDMAN
CHIEF UNITED STATES DISTRICT JUDGE

ANDREW JACKSON,

Respondent,

**OPINION AND ORDER DENYING A CERTIFICATE OF APPEALABILITY AND
LEAVE TO APPEAL IN FORMA PAUPERIS**

This matter was remanded from the United States Court of Appeals for the Sixth Circuit. In 2000, petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, in order to challenge his 1996 convictions out of the Oakland County Circuit Court for first-degree criminal sexual conduct, felonious assault, felony-firearm, and being a second habitual offender. In June 2001, the Court denied his petition. *Ferqueron v. Straub*, No. 00-70662 (E.D. Mich. June 5, 2001), *aff'd*, 42 Fed. Appx. 748 (6th Cir. 2002), *cert. denied*, 538 U.S. 928 (2003). Petitioner also filed a motion for reconsideration, which was denied by the Court. *Ferqueron v. Straub*, No. 00-70662 (E.D. Mich. Sept. 13, 2002).

On June 22, 2006, this Court denied petitioner's motion for relief from judgment, finding it to be untimely in light of the fact that petitioner had waited almost four years following the denial of his petition to bring this motion. See *Ferqueron v. Jackson*, 2006 WL 17221992 (E.D. Mich. June 22, 2006). On August 15, 2006, the Court denied petitioner's motions to alter and amend judgment, for reconsideration, and to disqualify the Court. The Court also denied petitioner a certificate of appealability.

The United States Court of Appeals for the Sixth Circuit has now sent petitioner a letter, in which it indicates that this Court has not yet resolved the issue of petitioner's liability for his appellate court filing fees or issued a certification ruling.

With respect to the second issue, this Court already denied petitioner a certificate of appealability when it denied his motions to alter or amend judgment. A certificate of appealability should issue in the context of a denial of a motion for relief from judgment denying a habeas petition only if the petitioner shows first, that jurists of reason would find it debatable whether the district court abused its discretion in denying the motion for relief from judgment, and secondly, whether jurists of reason would find it debatable whether the underlying petition, in light of the grounds alleged to support the motion for relief from judgment, would state a valid claim of the denial of a constitutional right. *Kellogg v. Strack*, 269 F. 3d 100, 104 (2nd Cir. 2001). In light of the fact that jurists of reason would not find this

Court's resolution of the motion for relief from judgment to be debatable, the Court declines to issue a certificate of appealability on petitioner's motion, as it previously declined to do so. The Court will likewise deny a certificate of appealability on petitioner's motions to alter or amend judgment and his motion for reconsideration, because jurists of reason would not find this Court's resolution of these motions to be debatable.

The Court will also deny petitioner leave to appeal *in forma pauperis*, because the appeal would be frivolous. See *Dell v. Straub*, 194 F. Supp. 2d 629, 659 (E.D. Mich. 2002).

ORDER

Based upon the foregoing, IT IS ORDERED that a certificate of appealability is **DENIED**.

IT IS FURTHER ORDERED that Petitioner will be **DENIED** leave to appeal *in forma pauperis*.

s/Bernard A. Friedman

HON. BERNARD A. FRIEDMAN
CHIEF UNITED STATES DISTRICT JUDGE

DATED: November 2, 2006